

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2022-35

August 19, 2022

EDMONTON POLICE SERVICE

Case File Number 009216

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Summary: The Complainant alleged that the Edmonton Police Service (the Public Body) collected, used, and disclosed her personal information in contravention of the *Freedom of Information and Protection of Privacy Act* (the Act). The Public Body collected, used, and disclosed the Complainant's personal information in a series of interactions with her as part of Crisis Response Team in partnership with Alberta Health Services. The Public Body disclosed the Complainant's personal information to its own members in a "Be on the Lookout For" bulletin, and to the Canadian Police Information Centre (CPIC) operated by the RCMP. The Public Body used the Complainant's personal information to execute an Admission Certificate issued under the *Mental Health Act*, and involuntarily convey her to a medical facility.

The Adjudicator found that the Public Body complied with the Act.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25; ss. 1(1)(h), 1(1)(h)(i), 1(1)(n)(i), 1(1)(iii), 1(1)(vi), 1(1)(vii), 1(1)(viii), 1(1)(ix), 33(b), 34(1)(g), 36, 39(1)(a), 39(4), 40(1)(h), 40(1)(r), 40(1)(r)(i), 40(4), 72; *Health Information Act*, R.S.A. 2000, c. H-5; *Mental Health Act*, R.S.A. 2000, c. M-13 ss. 2, 4(1), 4(2); *Police Act*, R.S.A. 2000, c. P-17 ss. 38(1), 38(1)(a)(iv).

Authorities Cited: AB: Orders F2008-029, F2011-07, F2020-26, H2021-07

I. BACKGROUND

[para 1] On December 26, 2016, a Crisis Response Team with the Edmonton Police Service (the Public Body) attended the Complainant's home. The team consisted of a member of the Public Body and two employees of Alberta Health Services (AHS): a physician (the Physician), and a therapist (the Therapist). During the visit the Physician examined the Complainant.

[para 2] Following the examination, the Physician completed a Form 1 Admission Certificate (the Admission Certificate) regarding the Complainant, pursuant to section 2 of the *Mental Health Act*, R.S.A. 2000, c. M-13 (the MHA). The Admission Certificate contained the Physician's opinion that the Complainant should be conveyed to a medical facility for examination. Pursuant to the Admission Certificate, the Complainant was then involuntarily transported and admitted to a medical facility the next day by members of the Public Body, acting as part of a Crisis Response Team.

[para 3] In late February 2017, the Complainant made an access to information request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act) to the Public Body. Upon receiving a response to the access request, the Complainant learned that the Public Body had collected her personal information, including financial information, medical information, and everything about her reported in the Admission Certificate.

[para 4] The Complainant also learned that the Public Body uploaded the Admission Certificate to the Canadian Police Information Centre database (CPIC). The Admission Certificate was also distributed to other members of the Public Body (police officers) via a "Be on the Lookout For" (BOLF) notification.

[para 5] On May 16, 2018, the Complainant made a complaint to the Office of the Information and Privacy Commissioner that the Public Body collected, used, and disclosed her personal information in contravention of the Act.

[para 6] Investigation and mediation were authorized to attempt to resolve the issues, but did not do so. The matter proceeded to inquiry.

II. ISSUES

- A. Did the Public Body collect the Complainant's personal information in contravention of Part 2 of the Act?**
- B. Did the Public Body use the Complainant's personal information in contravention of Part 2 of the Act?**
- C. Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act? In particular, was the disclosure authorized under section 40(1) and 40(4)?**

III. DISCUSSION OF ISSUES

Preliminary Matter – Other issues not considered

[para 7] In a separate complaint concerning the same events, the Complainant alleged that AHS collected and disclosed her health information to the Public Body in contravention of the *Health Information Act*, R.S.A. 2000, c. H-5. That complaint was the subject of Order H2021-07. In that Order I noted that in addition to the Admission Certificate, the AHS disclosed notes prepared by the Physician (the Physician's Notes) to the Public Body and that this was done in error.

[para 8] Unlike in Order H2021-07, the Complainant did not raise the matter of the Public Body collecting the Physician's Notes in this case. The complaint is specific to the Admission Certificate and other information collected throughout the Public Body's interactions with her. Accordingly, I make no finding regarding the Physician's Notes in this case.

[para 9] In her submission, the Complainant takes issue with the correctness of many statements contained in the Public Body's notes and records concerning their interactions with her. The correctness of the personal information collected by the Public Body is not in issue in this Inquiry. If the Complainant believes that the Public Body has erroneous personal information about her, the proper avenue to address such concerns is by making a request for correction under section 36 of the Act.

A. Did the Public Body collect the Complainant's personal information in contravention of Part 2 of the Act?

[para 10] The Public Body provided a sworn affidavit from one of its members, including notes taken regarding their interactions with the Complainant and collection activities. In brief, the Public Body explains the circumstances in which the Complainant's information was collected as follows:

[para 11] The Complainant's information was collected by the Public Body as its members responded to concerns about the Complainant as part of a Crisis Response Team.

[para 12] A Crisis Response Team is a unit composed of police officers and healthcare workers and professionals from AHS. A memorandum of understanding (MOU) between the Public Body and AHS sets out how a Crisis Response Team operates. Under the terms of the MOU, police officers are responsible for carrying out their duties under the *Police Act* and *MHA*, while AHS is responsible for providing the Public Body with health information pursuant to the *Health Information Act*, R.S.A. 2000, c H-5.

[para 13] The general purpose of the partnership enabled under the MOU is to fulfill the joint mandate of the Public Body and AHS to respond to adults experiencing mental

health troubles, alcohol or drug addiction, or homelessness, and to promote proactive community engagement. The role of the Public Body on the Crisis Response Team is to protect the health professionals. The role of the health professionals is to assist the Public Body when dealing with individuals with mental health information by lending their expertise in such matters.

[para 14] In early December 2016, staff at Alberta Works called the Public Body, concerned that the Complainant was having a medical episode. According to the Public Body, the Complainant had attended Alberta Works seeking employment; the Complainant needed extra income because she had care of two teenage grandchildren. A Crisis Response Team responded to the call. A few days later, the Complainant called Urgent Services concerned that Urgent Services was not helping her. The Complainant also demanded to speak to the members of a Crisis Response Team that she had dealt with in February 2016.

[para 15] On December 22, 2016, Alberta Works reported that the Complainant was planning to attend their offices again, and requested a Crisis Response Team attend to assist. Alberta Works was also concerned that the Complainant had returned a benefits cheque to Alberta Works. The matter was particularly concerning since the Complainant had reported having care of two of her grandchildren.

[para 16] Later on December 22, 2016, a Crisis Response Team attempted to assess the Complainant at her home but was unable to do so. A further attempt occurred on December 25, 2016 but the Complainant did not want to deal with the team, since it was Christmas Day.

[para 17] In light of the earlier difficulty assessing the Complainant, on December 26, a Crisis Response Team, including the Therapist and the Physician attended the Complainant's home again. The Therapist had asked the Physician to attend for the purposes of assessing whether issuing an Admission Certificate was appropriate. The Physician assessed the Complainant by speaking through the door and over the telephone. Using information gathered from the Complainant, the Physician completed the Admission Certificate.

[para 18] Also on December 26, a police officer spoke directly to the Complainant, and collected information from her, which appears in the Officer's notes from the encounter. The police officer recorded that the Complainant stated that she had custody of two grandchildren

[para 19] Later that day, a member of the Public Body contacted Children's Services and determined that the Complainant had custody of two grandchildren. Children's Services also stated that the Complainant received financial assistance to assist with care for her grandchildren.

[para 20] On December 27, 2016 another Crisis Response Team attended the Complainant's home to execute the Admissions Certificate, convey her to a medical facility, and see her admitted thereto.

[para 21] The Public Body explains that it collected information about the Complainant from Alberta Works and Children's Services. It also collected the personal information about the Complainant that was contained in the Admission Certificate.

[para 22] To summarize, throughout the above events, the Public Body collected the following information about the Complainant from Alberta Works:

- Information and opinion about the Complainant's behavior at Alberta Works' offices in the days and weeks leading prior to December 26,
- Information related to the Complainant's care and custody of two grandchildren,
- Information related to the Complainant's financial situation, and receipt of benefits.

[para 23] The Public body collected the following information from Children's Services:

- Information related to the Complainant's care and custody of two grandchildren; and,
- Information related to the Complainant's financial situation, and receipt of benefits.

[para 24] The Public Body also collected all of the information contained in the Admission Certificate prepared by the Physician. That information consists of the following;

- The Complainant's name and address,
- The Complainant's opinions about whether her rights are being violated,
- The Physician's observations of her behavior,
- The Physician's medical opinions about the Complainant; and,
- The Physician's recommendation that the Complainant should be involuntarily admitted to a medical facility.

[para 25] The Public Body collected the following information directly from the Complainant in the course of its various interactions with her:

- The fact that the Complainant has custody of two of her grandchildren.
- The Complainant’s opinions about the involvement of the Crisis Team in her life.

[para 26] All of the above information is the Complainant’s personal information under sections 1(n)(i), (iii), (vi), (vii), (viii), and (ix) of the Act. Those sections define “personal information” to include a person’s name, address, family status, financial history, health and healthcare history, others’ opinions about the individual, and the individual’s opinions, except if about someone else.

[para 27] The Public Body states that its collection activities are permitted pursuant to sections 33(b) and 34(1)(g) of the Act. Those section permit collection for the purposes of law enforcement, directly and indirectly:

33 No personal information may be collected by or for a public body unless

...

(b) that information is collected for the purposes of law enforcement, or

...

34(1) A public body must collect personal information directly from the individual the information is about unless

...

(g) the information is collected for the purpose of law enforcement,

[para 28] “Law enforcement” is defined in section 1(h) of the Act. The pertinent portion of the definition in this case is in section 1(h)(i):

(h) “law enforcement” means

(i) policing, including criminal intelligence operations,

....

[para 29] The Public Body submits that the action of its members in this case constitute policing. I agree.

[para 30] The general ambit of “policing” was discussed in Order F2008-029 at para. 30:

Although the Act does not define “policing,” in Order 2000-027, the former Commissioner defined policing as “...those activities carried out, under the authority of a statute, regarding the maintenance of public order, detection and prevention of crime or the enforcement of law.” (para 16). Police officers are charged by statute with the preservation and maintenance of the public peace and the prevention of crime.

[para 31] Section 38(1) of the *Police Act*, R.S.A. 2000, c. P-17 (the *Police Act*) describes the general duties and responsibilities of police officers in Alberta:

38(1) Every police officer is a peace officer and has the authority, responsibility and duty

(a) to perform all duties that are necessary

(i) to carry out the police officer’s functions as a peace officer,

(ii) to encourage and assist the community in preventing crime,

(iii) to encourage and foster a co-operative relationship between the police service and the members of the community, and

(iv) to apprehend persons who may lawfully be taken into custody,

and

(b) to execute all warrants and perform all related duties and services.

[para 32] Sections 4(1) and (2) of the MHA are also relevant here. It provides the authority to apprehend a person once a Form 1 admission certificate issued:

4(1) One admission certificate is sufficient authority

(a) to apprehend the person named in the certificate and convey the person to a facility and for any person to care for, observe, assess, detain and control the person named in the certificate during the person’s apprehension and conveyance to a facility, and

(b) to care for, observe, examine, assess, treat, detain and control the person named in the certificate for a period of 24 hours from the time when the person arrives at the facility.

(2) The authority to apprehend a person and convey the person to a facility under subsection (1)(a) expires at the end of 72 hours from the time when the certificate is issued.

[para 33] Considering the scope of “policing” I find that the Public Body collected the Complainant’s personal information in the course of policing, and hence for law enforcement purposes. It is evident that the actions of the police were undertaken pursuant to the statutory authority provided under the *Police Act* and the MHA, with a view to maintaining to the public order and the public peace, and, more specifically,

engaging in community outreach. The members of the Public Body were responding to health and safety concerns brought to their attention by Alberta Works, as part of their role on a Crisis Response Team. Information collected directly from the Complainant as well as from other sources was collected for those purposes.

B. Did the Public Body use the Complainant's personal information in contravention of Part 2 of the Act?

[para 34] The Public Body used the Complainant's personal information when carrying out the policing activities described above, including apprehending and conveying the Complainant to a medical facility.

[para 35] The Public Body states that such uses were permitted under section 39(1)(a) of the Act:

39(1) A public body may use personal information only

(a) for the purpose for which the information was collected or compiled or for a use consistent with that purpose,

[para 36] The Public Body asserts, and I agree, that the Complainant's personal information was collected for the purposes of law enforcement, and used for the same purpose. It is clear that the Public Body used the Complainant's personal information only to carry out policing activities, described above.

[para 37] I also find that the Public Body complied with section 39(4) of the Act:

(4) A public body may use personal information only to the extent necessary to enable the public body to carry out its purpose in a reasonable manner.

[para 38] There is no indication that the Public Body used the Complainant's personal information for any purpose other than law enforcement, or that any information was used in an unreasonable manner. The Complainant's personal information was used to assess the situation in which she dealt with members of the Public Body and to transport her to a medical facility as required under the MOU and permitted pursuant to the Admission Certificate under the MHA, and police powers under section 38(1)(a)(iv) of the *Police Act*.

C. Did the Public Body disclose the Complainant's personal information in contravention of Part 2 of the Act? In particular, was the disclosure authorized under section 40(1) and 40(4)?

[para 39] The Public Body disclosed the Complainant's personal information when it provided the Admission Certificate to CPIC and distributed it in the BOLF.

[para 40] CPIC is a national database operated by the RCMP, and is accessible by numerous law enforcement agencies across Canada. The Public Body sent the Admission

Certificate to CPIC so that other members of the Public Body, as well as other police agencies would be aware that an Admissions Certificate had been issued in the event that they queried the Complainant's name. According the Public Body, CPIC received the Admission Certificate at 8:15 pm on December 26, 2016 and uploaded it at 8:25 pm the same day. As described by the Public Body, the Admission Certificate was available on CPIC only for the time during which it was in force, and was taken down soon after. Pursuant to section 4(2) of the MHA, the Admission Certificate was in force for 72 hrs. once issued. In the present case, the Admission Certificate was removed CPIC just after 10:00 am on December 28, 2016.

[para 41] The Public Body further explains that while an officer could see that the Admission Certificate was issued, the Admission Certificate itself was not reviewable on CPIC. Any officer intending to act on the Admission Certificate would have to obtain it from the Public Body's warrant unit, which is where the hardcopy Admission Certificate is kept. In this case, a member of the Public Body retrieved the Admission Certificate from the Warrant Unit at 12:50 pm on December 27, 2016.

[para 42] The BOLF was issued to members of the Public Body's downtown division in order to make them aware that the Admissions Certificate had been issued with respect to the Complainant. The rationale for sharing the information was to aid other members of the Public Body in the execution of their duties in the event that they had any interaction with the Complainant.

[para 43] The Public Body suggests that issuing the BOLF was a use of information rather than a disclosure, since the BOLF was distributed only within a division of the Public Body. Previous orders of this Office have noted that sometimes the same events may appear to be a use or disclosure; see for example Orders F2011-07 and F2020-26. Here, as in those cases, whether or not the BOLF represents a use or a disclosure of information is of no matter. Below, I find that it is permitted as a disclosure. In the event that issuing the BOLF is instead a use, then it is a use for law enforcement purposes and permitted under section 39(1)(a) for the same reasons given under Issue B.

[para 44] Regarding disclosure to CPIC, such disclosure is permitted under section 40(1)(r) which permits disclosure by a law enforcement agency to other law enforcement agencies:

40(1) A public body may disclose personal information only

...

(r) if the public body is a law enforcement agency and the information is disclosed

(i) to another law enforcement agency in Canada, or

(ii) to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority,

[para 45] In this case, personal information was provided to CPIC, which is run by the RCMP, and is accessible to other law enforcement agencies in Canada. There is no indication that any foreign law enforcement agency had access, or did access, the Complainant's personal information. Accordingly, disclosure to CPIC is permitted under section 40(1)(r)(i).

[para 46] Regarding the BOLF, I find disclosure to the Public Body's downtown division is permitted under section 40(1)(h):

40(1) A public body may disclose personal information only

...

(h) to an officer or employee of the public body or to a member of the Executive Council, if the information is necessary for the performance of the duties of the officer, employee or member,

[para 47] Finally, I find that the Public Body complied with section 40(4) of the Act:

(4) A public body may disclose personal information only to the extent necessary to enable the public body to carry out the purposes described in subsections (1), (2) and (3) in a reasonable manner.

[para 48] The Public Body's disclosures were limited to its own personnel in the case of the BOLF, and to other law enforcement agencies in Canada in the case of CPIC. Regarding CPIC, the Complainant's personal information was removed soon after the Admission Certificate had been acted upon and did not linger beyond the duration of its authority. In either case, the purpose was simply to alert law enforcement that the Admission Certificate had been issued, in order that any law enforcement agent could interact with the Complainant accordingly.

[para 49] In conclusion, I find that the Public Body complied with the Act.

IV. ORDER

[para 50] I make this Order under section 72 of the Act.

[para 51] I find that the Public Body complied with the Act.

John Gabriele
Adjudicator